STATE OF MICHIGAN

COURT OF APPEALS

TARAS P. NYKORIAK and OLEKSANDR DMOKHOVSKYY a/k/a BISHOP PAISIY,

Plaintiffs-Appellants,

v

ZENON BILINSKI, HANA BILINSKI, RUSLANA PROONKO, STEPHAN FOROSHIVSKIY, KATERINA FOROSHIVSKA, OLGA FOROSHIVSKA, VASYL SHAYDA, VALENTINA SHAYDA, VICARIATE OF THE UKRAINIAN ORTHODOX CHURCH KYIVAN PATRIARCHATE IN THE UNITED STATES AND CANADA, JOHN JARESKO, and MYKHAILO ANTONOVYCH DENYSENKO a/k/a PATRIARCH FILARET,

Defendants-Appellees.

UNPUBLISHED
March 17, 2015

No. 319871
Wayne Circuit Court
LC No. 13-004640-CZ

Before: DONOFRIO, P.J., and RIORDAN and GADOLA, JJ.

PER CURIAM.

Plaintiffs, Taras P. Nykoriak (Nykoriak) and Oleksandr Dmokhovskyy (also known as Bishop Paisiy), are members of St. Andrew's Cathedral in Hamtramck, a parish that is affiliated with the Ukrainian Orthodox Church. They appeal as of right the trial court order granting summary disposition in favor of defendants, Zenon Bilinski (Zenon), Hana Bilinski (Hana), Ruslana Proonko (Proonko), Stephan Foroshivskiy (Stephan), Katerina Foroshivska (Katerina), Olga Foroshivska (Olga),[1] Vasyl Shayda (Vasyl), Valentina Shayda (Valentina), the Vicariate of the Ukrainian Orthodox Church Kyivan Patriarchate in the United States and Canada (the Vicariate), John Jaresko, and Mykhailo Antonovych Denysenko (also known as Patriarch Filaret). We affirm.

I. STANDARD OF REVIEW

[1] Collectively, these six defendants will be referred to as the "distribution defendants."

" 'A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone.' " *Averill v Dauterman*, 284 Mich App 18, 21; 772 NW2d 797 (2009), quoting *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998). "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Moreover, a "motion under MCR 2.116(C)(8) may be granted only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.' " *Id.*, quoting *Wade v Dep't of Corrections,* 439 Mich 158, 163, 483 NW2d 26 (1992).

II. TORTIOUS CONDUCT

A. COMPLAINT

Plaintiffs alleged two tortious acts in their complaint: (1) intentional infliction of emotional distress; and (2) defamation. They asserted that defendants Denysenko and the Vicariate released a press release on March 23, 2013, which falsely alleged that plaintiff Bishop Paisiy resigned as bishop; he transferred to the Moscow Patriarchate; he could no longer serve as bishop; he now was known as monk Luka; his ordination of Nykoriak was not valid; Nykoriak could not be recognized as a deacon; and that St. Andrew Church was placed under the direction of the Vicariate. Plaintiffs also alleged that on March 24, 2013, the distribution defendants arrived at St. Andrew and behaved in an unruly manner, used profanity, interrupted services, took pictures of plaintiffs, called them, "The Devil, Criminal Thief, and other inappropriate, immoral and unlawful terms," and then distributed the Vicariate's press release to the congregation. Plaintiffs also contended that defendants Vasyl, Valentina, and Proonko disseminated false and threatening statements of the same nature on more than one occasion to other persons.

B. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

"To establish a prima facie claim of intentional infliction of emotional distress, the plaintiff must present evidence of (1) the defendant's extreme and outrageous conduct, (2) the defendant's intent or recklessness, (3) causation, and (4) the severe emotional distress of the plaintiff." *Dalley v Dykema Gossett*, 287 Mich App 296, 321; 788 NW2d 679 (2010) (quotation marks and citation omitted). As we have repeatedly recognized:

> Liability for the intentional infliction of emotional distress has been found only where the conduct complained of has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community. Accordingly, liability does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. [*Lucas v Awaad*, 299 Mich App 345, 359; 830 NW2d 141 (2013) (quotation marks, brackets, and citation omitted).]

Thus, "[t]he threshold for showing extreme and outrageous conduct is high," and "[n]o cause of action will necessarily lie even where a defendant acts with tortious or even criminal intent." *VanVorous v Burmeister*, 262 Mich App 467, 481; 687 NW2d 132 (2004). "The test to

determine whether a person's conduct was extreme and outrageous is whether recitation of the facts of the case to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!' " *Lewis v LeGrow*, 258 Mich App 175, 196; 670 NW2d 675 (2003). Generally, it is the trial court's duty to determine whether the defendant's conduct is extreme and outrageous. *Id.* at 197. However, if reasonable minds could differ on the subject, it is a question of fact for the jury. *Id*.

The trial court properly granted summary disposition on the intentional infliction of emotional distress claim. While the disputed conduct may have been unpleasant, the threshold for proving extreme and outrageous conduct is great. *VanVorous,* 262 Mich App at 481. Plaintiffs asserted that defendants were unruly and profane, disseminated false information about Bishop Paisiy's resignation and authority within the church, and called plaintiffs unflattering names. While perhaps unfortunate, this conduct amounted to nothing more than "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." *Lucas*, 299 Mich App at 359. Such comments do not rise to the level of intentional infliction of emotional distress. *VanVorous,* 262 Mich App at 481. Simply stated, this conduct was not "beyond all possible bounds of decency" or "atrocious and utterly intolerable in a civilized community." *Lucas*, 299 Mich App at 359.

Thus, summary disposition is proper regarding plaintiffs' claim of intentional infliction of emotional distress. See *Computer Network, Inc v AM Gen Corp*, 265 Mich App 309, 313; 696 NW2d 49 (2005) (we will affirm a summary disposition order if the trial court reached the correct result, even if for the wrong reasons).[2]

C. DEFAMATION

Generally, a plaintiff asserting a defamation claim must plead it with specificity, and identify the exact language asserted to be defamatory. *Thomas M Cooley Law Sch v Doe 1*, 300 Mich App 245, 262-263; 833 NW2d 331 (2013); *Royal Palace Homes, Inc v Channel 7 of Detroit, Inc*, 197 Mich App 48, 52-58; 495 NW2d 392 (1992). The elements of defamation are: (1) a false and defamatory statement concerning plaintiffs; (2) an unprivileged communication to a third party; (3) fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by publication (defamation per quod). *Thomas M Cooley Law Sch*, 300 Mich App at 262.

"A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Smith v Anonymous Joint Enter*, 487 Mich 102, 113; 793 NW2d 533 (2010) (quotation marks and citation omitted). Courts apply an objective, reasonable-person standard to

[2] Plaintiffs allege that the trial court impermissibly found that verbal conduct could not cause damage. The trial court referenced the idiom, "Sticks and stones may break my bones, but names will never hurt me." In context, the trial court was communicating that the disputed statements were mere insults, not actionable tortious conduct.

determine whether a statement is defamatory. *Ireland v Edwards*, 230 Mich App 607, 618-619; 584 NW2d 632 (1998). A court may determine as a matter of law whether a statement is "actually capable of defamatory meaning. Where no such meeting is possible, summary disposition is appropriate." *Kevorkian v American Med Ass'n*, 237 Mich App 1, 9; 602 NW2d 233 (1999) (citation omitted).

Words charging the commission of a crime are defamatory per se, so that the failure to prove damages is not fatal to the claim. *Burden v Elias Bros Big Boy Restaurants*, 240 Mich App 723, 727-728; 613 NW2d 378 (2000); MCL 600.2911(1). However, "allegedly defamatory statements must be analyzed in their proper context" because "[t]o hold otherwise could potentially elevate form over substance." *Smith*, 487 Mich at 129. "Thus, in cases where statements reasonably cannot be interpreted as stating actual facts about an individual, those statements are protected under the First Amendment." *Lakeshore Community Hosp, Inc v Perry*, 212 Mich App 396, 402; 538 NW2d 24 (1995). For example, " '[e]xaggerated language used to express opinion, such as 'blackmailer,' 'traitor' or 'crook,' does not become actionable merely because it could be taken out of context as accusing someone of a crime.' " *Kevorkian*, 237 Mich App at 8, quoting *Hodgins v Times Herald Co*, 169 Mich App 245, 254; 425 NW2d 522 (1988). Thus, "statements must be viewed in context to determine whether they are capable of defamatory interpretation, or whether they constitute no more than 'rhetorical hyperbole' or 'vigorous epithet.' " *Kevorkian*, 237 Mich App at 7.

Here, defendants' statements could "not reasonably be understood as stating actual facts about plaintiff[s]." *Ireland*, 230 Mich App at 618. Plaintiffs alleged that the distribution defendants arrived at St. Andrew, became unruly, and disrupted services. Plaintiffs claimed that in this chaotic environment, defendants hurled several insults, such as calling plaintiffs "the devil" and "criminal thief."[3] Yet, in this context, no reasonable person would conclude that plaintiffs were criminal thieves or the devil. Defendants were heckling plaintiffs over a dispute regarding who had authority to run St. Andrew. "[A]ny reasonable person hearing these remarks in context would have clearly understood what was intended." *Ireland*, 230 Mich App at 619. Defendants' statements amounted to "rhetorical hyperbole" or "vigorous epithet." *Ireland*, 230 Mich App at 618, quoting *Greenbelt Co-op Pub Ass'n v Bresler*, 398 US 6, 7; 90 S Ct 1537; 26 L Ed 2d 6 (1970). Because no reasonable person would accept these statements as actual fact, they are protected speech. *Kevorkian,* 237 Mich App at 6-7.

Plaintiffs also asserted defamation relating to the creation and distribution of the press release and related documents. As we have repeatedly recognized, "[i]f the gist of an article is substantially accurate, then the defendant cannot be liable." *Butcher v SEM Newspapers, Inc*, 190 Mich App 309, 312; 475 NW2d 380 (1991). See also *Wilson v Sparrow Health Sys*, 290 Mich App 149, 155; 799 NW2d 224 (2010) ("Truth is an absolute defense to a defamation claim."); *Hawkins v Mercy Health Servs, Inc*, 230 Mich App 315, 332-334; 583 NW2d 725

[3] To the extent plaintiffs alleged other insults were issued, they have not identified the precise language, so have abandoned any claim. *Thomas M Cooley Law Sch*, 300 Mich App at 262-263.

(1998). The inquiry into whether defendants' statements in these documents were true implicates the religious aspects of this case.

III. ECCLESIASTICAL ABSTENTION DOCTRINE

A. BACKGROUND

"[T]he First and Fourteenth Amendments to the United States Constitution protect freedom of religion by forbidding governmental establishment of religion and by prohibiting governmental interference with the free exercise of religion." *Chabad-Lubavitch of Mich v Schuchman*, 305 Mich App 337, 350; 853 NW2d 390 (2014) (quotation marks and citation omitted). However, civil courts generally have jurisdiction to resolve property disputes regarding ownership of church property. *Id.* at 350; *Lamont Community Church v Lamont Christian Reformed Church*, 285 Mich App 602, 615; 777 NW2d 15 (2009). Nevertheless, civil courts are prohibited from resolving church property disputes if to do so would require courts to rule on the basis of religious doctrine or practice, as courts must "defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization." *Chabad-Lubavitch of Mich*, 305 Mich App at 350 (quotation marks and citation omitted).

The ecclesiastical abstention doctrine, which applies to property disputes involving hierarchical religions, prohibits civil courts from determining "the correctness of an interpretation of canonical text or some decision relating to government of the religious polity." *Id.* at 351; *Lamont Community Church*, 285 Mich App at 616. "Religious doctrine refers to ritual, liturgy of worship and tenets of the faith. Polity refers to organization and form of government of the church." *Chabad-Lubavitch of Mich*, 305 Mich App at 352 (quotation marks and citation omitted).

B. APPLICATION IN THIS CASE

Here, plaintiffs contend that the instant case involves two independent dioceses, not an internal church conflict, as the Ukrainian Orthodox Church is not organized in a hierarchical fashion. Thus, plaintiffs conclude that the ecclesiastical abstention doctrine is inapposite. Plaintiffs, however, have not pleaded a claim involving property rights that would invoke issues of the ecclesiastical abstention doctrine and hierarchical organizations. Instead, plaintiffs' complaint is based purely in tort law. As the Michigan Supreme Court has long recognized, "a civil court has no jurisdiction over ecclesiastical questions unless property rights are involved. It is not the responsibility or duty of our civil courts, nor have they the right, to interfere with the practice of religion in any way whatsoever." *Davis v Scher*, 356 Mich 291, 297; 97 NW2d 137 (1959); *Berry v Bruce*, 317 Mich 490, 499; 27 NW2d 67, 71 (1947) ("judicial interference in the purely ecclesiastical affairs of religious organizations is improper."). See also *Dlaikan v Roodbeen*, 206 Mich App 591, 597; 522 NW2d 719 (1994) ("The salient point in this doctrinal area is that religious organizations are immune from the jurisdiction of civil courts only in matters that are purely ecclesiastical, i.e., pertaining to religious doctrine or church polity.").

The claims in this case involve religious doctrine or polity. When reviewing plaintiffs' complaint, we "look to the substance and effect of the complaint, not its emblemata." *Dlaikan*, 206 Mich App at 593 (quotation marks, brackets, and citation omitted). Here, plaintiffs'

remaining defamation claims relate to documents that defendants released or distributed discussing Bishop Paisiy's lack of religious authority, his religious name change, the proper succession of the church's leaders, and the governance of St. Andrew. Plaintiffs contend that these statements are untrue. Defendants contend the opposite. The truth of the statements depends almost entirely on an understanding of church doctrine and the organization and form of the church government. *Chabad-Lubavitch of Mich*, 305 Mich App at 352.

In other words, "the pleadings demonstrate that plaintiffs' claims are so entangled in questions of religious doctrine or ecclesiastical polity" that they are not conducive to civil resolution. *Dlaikan*, 206 Mich App at 594. In order to adjudicate plaintiffs' claims, a court would have to engage in an impermissible excursion into their religious doctrine pertaining to ordination, the religious authority needed for succession of their church leaders, and the organization and form of their church government. See, e.g., *Natal v Christian & Missionary Alliance*, 878 F2d 1575, 1577 (CA 1 1989) ("once a court is called upon to probe into a religious body's selection and retention of clergymen, the First Amendment is implicated."); *Turchyn v Nakonachny*, 157 Ohio App 3d 284, 289; 811 NE2d 119 (2004) ("regardless of whether St. Vladimir's [Ukrainian Orthodox Church] is a hierarchical or congregational church," whether parishioners have a right to receive communion "is purely an ecclesiastical issue.").

Regardless of how plaintiffs' claims are labeled, the resolution of them would require us to investigate matters of religious doctrine and polity. The First Amendment is designed to avoid excessive entanglement with the decisions of religious organizations, and in particular their choice of ministers. *Chabad-Lubavitch of Mich*, 305 Mich App at 350. As the exercise of civil jurisdiction over this dispute would excessively delve into questions of religious doctrine or polity, summary disposition is proper.

Because summary disposition is proper on the grounds discussed *supra*, we decline to address plaintiffs' alternative argument regarding the wire-service defense. Defendants, however, request an award of costs and attorney fees for having to respond to plaintiffs' frivolous claims. To the extent that this is a request for sanctions due to a vexatious appeal, defendants did not file a motion pursuant to MCR 7.211(C)(8), nor do we find sanctions warranted on this Court's initiative under MCR 7.216(C). However, as the prevailing party, defendants may tax costs pursuant to MCR 7.219.

IV. CONCLUSION

Summary disposition is proper because there is no genuine issue of material fact regarding plaintiffs' intentional infliction of emotional distress claim or their defamation claim based on defendants' verbal conduct. In regard to plaintiffs' defamation claim based on the written documents, this matter rests squarely within church doctrine and polity, and is not proper for civil adjudication. We affirm.

/s/ Pat M. Donofrio
/s/ Michael J. Riordan
/s/ Michael F. Gadola